



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/10124/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 13 April 2018**

**Decision & Reasons Promulgated
On 17 April 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

ALI FOUAD SABBAH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not appear and had asked to have the appeal heard on the papers

For the Respondent: Mt. T. Melvin, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant, who was born on 13 January 1984, is a national of The Palestinian Authority. He married a Hungarian national in a proxy marriage on 7 March 2011 and he applied for an EEA Residence Card on 6 May 2011. His application was refused but he appealed and his

appeal was allowed. As a consequence, he was issued with an EEA residence card on 27 January 2014 that was valid until 27 January 2019.

2. On 5 February 2016 the Appellant applied for permanent residence, as the spouse of an EEA national. His application was refused on 4 August 2016 on the basis that the Respondent believed that his marriage was one of convenience. This followed a home visit which took place on 19 July 2016. The refusal letter it was said that during that visit immigration officers obtained information that demonstrated that the Appellant and his wife did not and had never lived at their matrimonial home. His initial residence card was also revoked.
3. The Appellant appealed but First-tier Tribunal Judge Walters dismissed his appeal in a decision, promulgated on 9 August 2017. The Appellant appealed and First-tier Tribunal Judge Grimmett granted him permission to appeal on 15 February 2018.

THE ERROR OF LAW HEARING

4. On 6 April 2018 Haris Ali Solicitors wrote to the Upper Tribunal explaining that the Appellant was without the necessary funds to pay for representation at the hearing and asking for the appeal to be heard on the papers. On 10 April the Appellant's solicitors were informed that the appeal would remain in the list in order for the Home Office Presenting Officer to have an opportunity to make oral submissions. In the event, the Home Office Presenting Officer agreed that, as there had been a procedural error, the appeal should be allowed to the extent that it be remitted to the First-tier Tribunal to be re-heard.

ERROR OF LAW DECISION

5. On 6 April 2017, the Appellant's appeal was set down for 17 July 2017 and detailed directions were given. On 16 May 2017, the Appellant's solicitors requested that his appeal be determined on the papers, as he did not have sufficient financial resources to pay to be represented at the hearing. On 18 May 2017 directions were made that all evidence and submissions must be received by the Upper Tribunal by 30 June 2017. On 3 July 2017 the Appellant's solicitors applied for an extension of time to do so and there is an email in the Tribunal file which confirms that time was extended until 5 p.m. on 13 July 2017.

6. In paragraph 7 of the decision, First-tier Tribunal Judge Walters stated that he did not complete his decision until 25 July 2017 and that the Tribunal had still not received any further evidence or submissions by that time.
7. In paragraph 20 of his decision First-tier Tribunal Judge Walters then went on to find that the Respondent had led *prima facie* evidence that the Appellant's marriage was one of convenience. He also found that, as the Appellant and his wife had not attended the hearing and the Appellant had not submitted evidence and submissions in reply to the directions, he had concluded that his marriage was undertaken solely to allow him to stay in the United Kingdom. Therefore, he dismissed the Appellant's appeal against the decision to refuse him permanent residence and to revoke his initial residence card.
8. However, there is a receipt and a letter from Farani Taylor Solicitors in the Tribunal file which confirms that the Appellant's Bundle was received by the Upper Tribunal at 16.24 on 13 July 2017. However, the Bundle was not placed before First-tier Tribunal Judge Walters before he reached his decision.
9. This amounted to a common law breach of fairness in so far as the Appellant was not provided with the opportunity to meet the case put against him. The Respondent's Bundle, which was before the First-tier Tribunal Judge, did contain some of the evidence upon which the Appellant wished to rely but the evidence contained in the Bundle submitted by the Appellant on 13 July 2017 was significantly more extensive.
10. In the refusal letter, the Respondent asserted that during a visit to the Appellant's home on 19 July 2017 immigration officers obtained information that demonstrated that the Appellant and his wife had never lived there. This information does not appear to have been disclosed and the First-tier Tribunal Judge did not make any enquiries about the nature of this evidence. The First-tier Tribunal Judge noted that the Appellant had not addressed this point in his grounds of appeal but it is difficult to ascertain what more he could have done except submit further evidence of cohabitation in the absence of more detailed information about the alleged evidence.
11. The First-tier Tribunal Judge also said that the decision by the Appellant and his wife not to attend the hearing led to him making adverse findings against the Appellant. Before reaching

such a decision, the Judge should have given some weight to the letter from the Appellant's solicitors, which explained that it was lack of finances which had caused the Appellant to request a paper hearing and also that it would not have been possible for the Appellant and his wife to attend a paper hearing.

12. As a consequence, I find that the hearing before First-tier Tribunal Judge Walters the Appellant was not provided with the proper opportunity to put his case and that the paper hearing was procedurally unfair.
13. At today's hearing, the Appellant sought to rely on further evidence relating to the question of whether he was cohabiting with his wife, which had not been before First-tier Tribunal Judge Walters. For this reason it could not be considered but it should be formally submitted to the First-tier Tribunal along with any further updating material. It may also be useful to make enquiries about any record of the home visit made by Immigration Officers which led to a finding that the Appellant's marriage was one of convenience. So that this evidence, if any, can be addressed.
14. It may also be that the Appellant and his wife will be advised to attend the remitted hearing referred to below so that they are available to answer any questions from the Home Office Presenting Officer or the First-tier Tribunal Judge, even if they cannot afford to pay for legal representation at that hearing.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge, other than First-tier Tribunal Judge Walters, for a *de novo* hearing.

Nadine Finch

Signed

Date 13 April 2018

Upper Tribunal Judge Finch